

111TH CONGRESS
1ST SESSION

H. R. 2101

To promote reform and independence in the oversight of weapons system
acquisition by the Department of Defense.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Mr. SKELTON (for himself, Mr. McHUGH, Mr. ANDREWS, Mr. SPRATT, Mr. CONAWAY, Mr. COFFMAN of Colorado, Mr. SESTAK, Mr. BRADY of Pennsylvania, Mr. FORBES, Mrs. TAUSCHER, Mr. SNYDER, Ms. SHEA-PORTER, and Mr. MASSA) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To promote reform and independence in the oversight of
weapons system acquisition by the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Weapons Acquisition System Reform Through Enhanc-
6 ing Technical Knowledge and Oversight Act of 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ACQUISITION ORGANIZATION

- Sec. 101. Independent performance of acquisition oversight functions.
- Sec. 102. Oversight of cost estimation.
- Sec. 103. Oversight of systems engineering.
- Sec. 104. Oversight of performance assessment.
- Sec. 105. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.
- Sec. 106. Role of the commanders of the combatant commands in identifying joint military requirements.

TITLE II—ACQUISITION POLICY

- Sec. 201. Acquisition strategies ensuring competition throughout the lifecycle of major defense acquisition programs.
- Sec. 202. Additional requirements for certain major defense acquisition programs.
- Sec. 203. Requirement for certification of major systems prior to Milestone B.
- Sec. 204. Critical cost growth in major defense acquisition programs.
- Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.
- Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.
- Sec. 207. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.

TITLE I—ACQUISITION ORGANIZATION

SEC. 101. INDEPENDENT PERFORMANCE OF ACQUISITION OVERSIGHT FUNCTIONS.

(a) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 145. Principal advisors for acquisition oversight functions

“(a) ASSIGNMENT OF ACQUISITION OVERSIGHT FUNCTIONS.—The Secretary of Defense shall designate an official within the Office of the Secretary of Defense as the principal advisor to the Secretary for each acquisi-

1 tion oversight function specified in subsection (c). An offi-
2 cial may be designated to perform more than one function.
3 The performance of duties pursuant to this section shall
4 not limit or otherwise affect the performance of any other
5 duties assigned to such official by the Secretary or by
6 other officers of the Department responsible for the man-
7 agement and direction of such official except as necessary
8 to satisfy the requirements of subsection (b).

9 “(b) QUALIFICATIONS.—In designating an official for
10 a function pursuant to subsection (a), the Secretary shall
11 ensure that the official reports directly to the Secretary
12 in the performance of such function and is—

13 “(1) highly expert in matters relating to the
14 function;

15 “(2) assigned the appropriate staff and re-
16 sources necessary to carry out the function;

17 “(3) independent from those engaged in the
18 execution of acquisition programs;

19 “(4) free of any undue political influence; and

20 “(5) free of any personal conflict of interest.

21 “(c) ACQUISITION OVERSIGHT FUNCTIONS.—(1) The
22 acquisition oversight functions to be performed by officials
23 designated pursuant to paragraph (1) are as follows:

24 “(A) Cost estimation.

25 “(B) Systems engineering.

1 “(C) Performance assessment.

2 “(D) Such other acquisition functions as the
3 Secretary considers appropriate.

4 “(2) Each acquisition oversight function specified in
5 paragraph (1) shall cover all phases of an acquisition pro-
6 gram, including setting of requirements, formulation and
7 execution of budgets, and program execution.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of such chapter is amended by adding
10 at the end the following new item:

“145. Principal advisors for acquisition oversight functions.”.

11 **SEC. 102. OVERSIGHT OF COST ESTIMATION.**

12 (a) IN GENERAL.—Chapter 137 of title 10, United
13 States Code, is amended by adding at the end the fol-
14 lowing new section:

15 **“§ 2334. Acquisition oversight: oversight of cost esti-
16 mation**

17 “(a) ISSUANCE OF POLICIES, PROCEDURES, GUID-
18 ANCE, AND COST ESTIMATES.—The official assigned over-
19 sight of cost estimation pursuant to section 145 of this
20 title shall issue the following:

21 “(1) Policies and procedures governing the con-
22 duct of cost estimation and cost analysis generally
23 for the acquisition programs of the Department of
24 Defense.

1 “(2) Guidance relating to cost estimates and
2 cost analyses conducted in connection with major de-
3 fense acquisition programs under chapter 144 of this
4 title or major automated information system pro-
5 grams under chapter 144A of this title.

6 “(3) Guidance relating to the proper selection
7 of confidence levels for cost estimates generally, and
8 specifically, for the proper selection of confidence
9 levels for cost estimates for major defense acquisi-
10 tion programs under chapter 144 of this title or
11 major automated information system program under
12 chapter 144A of this title.

13 “(4) Independent cost estimates and cost anal-
14 yses for major defense acquisition programs and
15 major automated information system programs for
16 which the Under Secretary of Defense for Acquisi-
17 tion, Technology, and Logistics is the Milestone De-
18 cision Authority—

19 “(A) in advance of—

20 “(i) any certification under section
21 2366a or 2366b of title 10, United States
22 Code;

23 “(ii) any decision to enter into low-
24 rate initial production or full-rate produc-
25 tion;

1 “(iii) any certification under section
2 2433(e)(2) of this title; and

3 “(iv) any report under section
4 2445c(f) of this title; and

5 “(B) at any other time considered nec-
6 essary by such official or upon the request of
7 the Under Secretary of Defense for Acquisition,
8 Technology, and Logistics.

9 “(b) REVIEW OF COST ESTIMATES, COST ANALYSES,
10 COST INDEXES, AND RECORDS OF THE MILITARY DE-
11 PARTMENTS.—The official designated for oversight of cost
12 estimation pursuant to section 145 of this title is author-
13 ized—

14 “(1) to promptly receive the results of all cost
15 estimates and cost analyses conducted by the mili-
16 tary departments, and all studies conducted by the
17 military departments in connection with such cost
18 estimates and cost analyses, for major defense acqui-
19 sition programs and major automated information
20 systems of the military departments, and to com-
21 ment on such estimates, analyses, and studies; and

22 “(2) to have timely access to any records and
23 data in the Department of Defense (including the
24 records and data of each military department and
25 including classified and proprietary information as

1 appropriate) that the official considers necessary to
2 review in order to carry out any duties under this
3 section.

4 “(c) PARTICIPATION, CONCURRENCE, AND APPROVAL
5 IN COST ESTIMATION.—The official designated for over-
6 sight of cost estimation pursuant to section 145 of this
7 title is authorized to be involved in all discussions relating
8 to cost estimation and the estimation of resource levels
9 required for major defense acquisition programs and
10 major automated information systems of the Department
11 of Defense generally at all stages of such programs and
12 may—

13 “(1) participate in the formulation of study
14 guidance for analyses of alternatives for major de-
15 fense acquisition programs;

16 “(2) participate in the discussion of any dis-
17 crepancies between an independent cost estimate and
18 the cost estimate of a military department for a
19 major defense acquisition program or major auto-
20 mated information system of the Department of De-
21 fense;

22 “(3) approve or disapprove, at such official’s
23 sole discretion, the confidence level for any cost esti-
24 mate of a major defense acquisition program or
25 major automated information system of the Depart-

1 ment of Defense used at any of the events specified
2 in paragraph (4) of subsection (a) of this section;

3 “(4) concur in the choice of a cost estimate for
4 use at any of the events specified in paragraph (4)
5 of subsection (a) of this section; and

6 “(5) participate in any decision to request au-
7 thorization of a multiyear procurement contract for
8 a major defense acquisition program.

9 “(d) RELATIONSHIP TO COST ANALYSIS IMPROVE-
10 MENT GROUP.—The official designated to perform over-
11 sight of cost estimation pursuant to section 145 of this
12 title shall be assigned responsibility for the management
13 and oversight of the Cost Analysis Improvement Group
14 of the Department of Defense.

15 “(e) ANNUAL REPORT.—Not later than March 1 of
16 each year, beginning on March 1, 2010, the official des-
17 ignated to perform oversight of cost estimation pursuant
18 to section 145 of this title shall submit to the congres-
19 sional defense committees a report on the activities under-
20 taken pursuant to this section during the preceding year.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 at the beginning of such chapter is amended by adding
23 at the end the following new item:

“2334. Acquisition oversight: oversight of cost estimation.”.

1 **SEC. 103. OVERSIGHT OF SYSTEMS ENGINEERING.**

2 (a) IN GENERAL.—Chapter 137 of title 10, United
3 States Code, as amended by section 102, is further amend-
4 ed by adding at the end the following new section:

5 **“§ 2334a. Acquisition oversight: oversight of systems**
6 **engineering**

7 “(a) ISSUANCE OF POLICIES, PROCEDURES, AND
8 GUIDANCE.—The official designated to perform oversight
9 of systems engineering pursuant to section 145 of this title
10 shall—

11 “(1) issue policies, procedures, and guidance for
12 all elements of the Department of Defense con-
13 cerning—

14 “(A) the use of systems engineering prin-
15 ciples and best practices, generally;

16 “(B) the use of systems engineering ap-
17 proaches to enhance reliability, availability, and
18 maintainability on major defense acquisition
19 programs;

20 “(C) the development of systems engineer-
21 ing master plans for major defense acquisition
22 programs;

23 “(D) the inclusion of provisions relating to
24 systems engineering and reliability growth in
25 requests for proposals;

1 “(E) developmental test and evaluation
2 generally;

3 “(F) in coordination with the Director of
4 Operational Test and Evaluation, the integra-
5 tion of developmental test and evaluation with
6 operational test and evaluation;

7 “(G) in coordination with the Director of
8 Operational Test and Evaluation, the develop-
9 ment of test and evaluation master plans for
10 major defense acquisition programs; and

11 “(H) the use of developmental test and
12 evaluation as part of a coordinated systems en-
13 gineering approach to system development; and

14 “(2) provide advocacy, oversight, and direction
15 to elements of the acquisition workforce responsible
16 for systems engineering and developmental test and
17 evaluation functions.

18 “(b) PARTICIPATION IN REQUIREMENTS DISCUS-
19 SIONS.—The official designated to perform oversight of
20 systems engineering pursuant to section 145 of this title
21 shall provide input on the inclusion of systems engineering
22 requirements in the process for consideration of joint mili-
23 tary requirements by the Joint Requirements Oversight
24 Council pursuant to section 181 of title 10, United States

1 Code, including specific input relating to each capabilities
2 development document.

3 “(c) ACCESS TO RECORDS OF THE MILITARY DE-
4 PARTMENTS.—The official designated to perform over-
5 sight of systems engineering pursuant to section 145 of
6 this title shall have access to any records or data of the
7 Department of Defense (including the records and data
8 of each military department and including classified and
9 proprietary information as appropriate) that the official
10 considers necessary to review in order to carry out any
11 duties under this section.

12 “(d) ASSESSMENT OF MILITARY DEPARTMENT CA-
13 PABILITIES FOR SYSTEMS ENGINEERING AND DEVELOP-
14 MENTAL TEST AND EVALUATION.—The official des-
15 ignated to perform oversight of systems engineering pur-
16 suant to section 145 of this title shall periodically assess
17 the capabilities of the military departments for systems
18 engineering and developmental test and evaluation and
19 provide such assessment, along with such recommenda-
20 tions for improvement as the official considers necessary,
21 to the Secretary of Defense and the Under Secretary of
22 Defense for Acquisition, Technology, and Logistics.

23 “(e) REVIEW AND APPROVAL OF PLANS FOR MAJOR
24 DEFENSE ACQUISITION PROGRAMS.—The official des-
25 ignated to perform oversight of systems engineering pur-

1 suant to section 145 of this title shall review and approve
 2 the following plans with respect to any major defense ac-
 3 quisition program:

4 “(1) The systems engineering master plan.

5 “(2) The developmental test and evaluation
 6 plan within the test and evaluation master plan.

7 “(f) ANNUAL REPORT.—Not later than March 1 of
 8 each year, beginning on March 1, 2010, the official des-
 9 ignated to perform oversight of systems engineering pur-
 10 suant to section 145 of this title shall submit to the con-
 11 gressional defense committees a report on the activities
 12 undertaken pursuant to this section during the preceding
 13 year.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 at the beginning of such chapter, as amended by section
 16 102, is further amended by adding at the end the following
 17 new item:

“2334a. Acquisition oversight: oversight of systems engineering.”.

18 **SEC. 104. OVERSIGHT OF PERFORMANCE ASSESSMENT.**

19 (a) IN GENERAL.—Chapter 137 of title 10, United
 20 States Code, as amended by section 103, is further amend-
 21 ed by adding at the end the following new section:

22 **“§ 2334b. Acquisition oversight: oversight of perform-**
 23 **ance assessment**

24 “(a) ISSUANCE OF POLICIES, PROCEDURES, AND
 25 GUIDANCE FOR PERFORMANCE ASSESSMENTS.—The offi-

1 cial designated to perform oversight of performance as-
2 sessment pursuant to section 145 of this title shall be re-
3 sponsible for the issuance of policies, procedures, and
4 guidance governing the conduct of performance assess-
5 ments for the acquisition programs of the Department of
6 Defense, including assessment of the extent to which ac-
7 quisition programs—

8 “(1) deliver sufficient capability to the
9 warfighter;

10 “(2) achieve timely delivery of such capability;
11 and

12 “(3) deliver a level of value consistent with re-
13 sources expended.

14 “(b) ASSESSMENT OF BASELINE QUALITY.—The of-
15 ficial designated to perform oversight of performance as-
16 sessment pursuant to section 145 of this title shall periodi-
17 cally assess the suitability of the baseline descriptions re-
18 quired by section 2435 of title 10, United States Code,
19 of major defense acquisition programs for providing a
20 basis for performance assessment and make such rec-
21 ommendations to the Secretary of Defense and the Under
22 Secretary of Defense for Acquisition, Technology, and Lo-
23 gistics as the official considers necessary to improve the
24 suitability of baseline descriptions for such purpose.

1 “(c) EARNED VALUE MANAGEMENT SYSTEM.—The
2 official designated to perform oversight of performance as-
3 sessment pursuant to section 145 of this title shall be re-
4 sponsible for the management and oversight of the records
5 of the earned value management system of the Depart-
6 ment of Defense.

7 “(d) PARTICIPATION IN CERTAIN PROGRAM RE-
8 VIEW.—The official designated to perform oversight of
9 performance assessment pursuant to section 145 of this
10 title is authorized to present an assessment of the per-
11 formance of a major defense acquisition program during—

12 “(1) any discussions prior to certification under
13 section 2433(e)(2) of this title;

14 “(2) any discussions prior to entry into full-rate
15 production; and

16 “(3) consideration of any decision to request
17 authorization of a multiyear procurement contract
18 for a major defense acquisition program.

19 “(e) ANNUAL REPORT.—Not later than March 1 of
20 each year, beginning on March 1, 2010, the official des-
21 ignated to perform oversight of performance assessment
22 pursuant to section 145 of this title shall submit to the
23 congressional defense committees a report on the activities
24 undertaken pursuant to this section during the preceding
25 year.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of such chapter, as amended by section
 3 103, is further amended by adding at the end the following
 4 new item:

“2334b. Acquisition oversight: oversight of performance assessment.”.

5 **SEC. 105. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**
 6 **CRITICAL TECHNOLOGIES OF MAJOR DE-**
 7 **FENSE ACQUISITION PROGRAMS BY THE DI-**
 8 **RECTOR OF DEFENSE RESEARCH AND ENGI-**
 9 **NEERING.**

10 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-
 11 SEARCH AND ENGINEERING.—

12 (1) IN GENERAL.—Section 139a of title 10,
 13 United States Code, is amended by adding at the
 14 end the following new subsection:

15 “(c)(1) The Director of Defense Research and Engi-
 16 neering shall periodically review and assess the techno-
 17 logical maturity and integration risk of critical tech-
 18 nologies of the major defense acquisition programs of the
 19 Department of Defense and report on the findings of such
 20 reviews and assessments to the Under Secretary of De-
 21 fense for Acquisition, Technology, and Logistics.

22 “(2) The Director shall submit to the Secretary of
 23 Defense and to the congressional defense committees by
 24 January 1 of each year a report on the technological matu-
 25 rity and integration risk of critical technologies of the

1 major defense acquisition programs of the Department of
2 Defense.”.

3 (2) FIRST ANNUAL REPORT.—The first annual
4 report under subsection (c)(2) of section 139a of
5 title 10, United States Code (as added by paragraph
6 (1)), shall be submitted to Congress not later than
7 March 1, 2011, and shall address the results of re-
8 views and assessments conducted by the Director of
9 Defense Research and Engineering pursuant to sub-
10 section (c)(1) of such section (as so added) during
11 the preceding calendar year.

12 (b) REPORT ON RESOURCES FOR IMPLEMENTA-
13 TION.—Not later than 120 days after the date of the en-
14 actment of this Act, the Director of Defense Research and
15 Engineering shall submit to the congressional defense
16 committees a report describing any additional resources
17 that may be required by the Director, and by other re-
18 search and engineering elements of the Department of De-
19 fense, to carry out the following:

20 (1) The requirements under the amendment
21 made by subsection (a)(1).

22 (2) The technological maturity assessments re-
23 quired by section 2366b(a) of title 10, United States
24 Code.

1 (3) The requirements of Department of Defense
2 Instruction 5000, as revised.

3 **SEC. 106. ROLE OF THE COMMANDERS OF THE COMBATANT**
4 **COMMANDS IN IDENTIFYING JOINT MILITARY**
5 **REQUIREMENTS.**

6 Section 181(d) of title 10, United States Code, is
7 amended—

8 (1) by inserting “(1)” before “The Under Sec-
9 retary”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(2) The Council shall seek and consider input from
13 the commanders of the combatant commands in carrying
14 out its mission under paragraphs (1) and (2) of subsection
15 (b) and in conducting periodic reviews in accordance with
16 the requirements of subsection (e).”.

17 **TITLE II—ACQUISITION POLICY**

18 **SEC. 201. ACQUISITION STRATEGIES ENSURING COMPETI-**
19 **TION THROUGHOUT THE LIFECYCLE OF**
20 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

21 (a) ACQUISITION STRATEGY ENSURING COMPETI-
22 TION.—The Secretary of Defense shall ensure that the ac-
23 quisition strategy for each major defense acquisition pro-
24 gram includes measures to ensure competition, or the op-
25 tion of competition, at both the prime contract level and

1 the subcontract level of such program throughout the life-
2 cycle of such program as a means to improve contractor
3 performance.

4 (b) MEASURES TO ENSURE COMPETITION.—The
5 measures to ensure competition, or the option of competi-
6 tion, for purposes of subsection (a) may include measures
7 to achieve the following, in appropriate cases if such meas-
8 ures are cost-effective:

9 (1) Competitive prototyping.

10 (2) Dual-sourcing.

11 (3) Funding of a second source for interchange-
12 able, next-generation prototype systems or sub-
13 systems.

14 (4) Use of modular, open architectures to en-
15 able competition for upgrades.

16 (5) Use of build-to-print approaches to enable
17 production through multiple sources.

18 (6) Acquisition of complete technical data pack-
19 ages.

20 (7) Periodic competitions for subsystem up-
21 grades.

22 (8) Licensing of additional suppliers.

23 (9) Periodic system or program reviews to ad-
24 dress long-term competitive effects of program deci-
25 sions.

1 **SEC. 202. ADDITIONAL REQUIREMENTS FOR CERTAIN**
2 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

3 (a) ADDITIONAL REQUIREMENTS RELATING TO
4 MILESTONE B APPROVAL.—Section 2366b of title 10,
5 United States Code, is amended—

6 (1) in subsection (d)—

7 (A) by inserting “(1)” before “The Mile-
8 stone Decision Authority may”; and

9 (B) by striking the second sentence and in-
10 serting the following:

11 “(2) Whenever the Milestone Decision Authority
12 makes such a determination and authorizes such a waiv-
13 er—

14 “(A) the waiver, the determination, and the
15 reasons for the determination shall be submitted in
16 writing to the congressional defense committees
17 within 30 days after the waiver is authorized; and

18 “(B) the Milestone Decision Authority shall re-
19 view the program not less often than annually to de-
20 termine the extent to which such program currently
21 satisfies the certification components specified in
22 paragraphs (1) and (2) of subsection (a) until such
23 time as the Milestone Decision Authority determines
24 that the program satisfies all such certification com-
25 ponents.”;

1 (2) by redesignating subsections (e) and (f) as
2 subsections (f) and (g), respectively, and inserting
3 after subsection (d) the following new subsection (e):

4 “(e) DESIGNATION OF CERTIFICATION STATUS IN
5 BUDGET DOCUMENTATION.—Any budget request, budget
6 justification material, budget display, reprogramming re-
7 quest, Selected Acquisition Report, or other budget docu-
8 mentation or performance report submitted by the Sec-
9 retary of Defense to the President regarding a major de-
10 fense acquisition program receiving a waiver pursuant to
11 subsection (d) shall prominently and clearly indicate that
12 such program has not fully satisfied the certification re-
13 quirements of this section until such time as the Milestone
14 Decision Authority makes the determination that such
15 program has satisfied all certification components pursu-
16 ant to subsection (d)(2)(B).”;

17 (3) in subsection (a)—

18 (A) in paragraph (1), by striking “and” at
19 the end;

20 (B) by redesignating paragraph (2) as
21 paragraph (3);

22 (C) by inserting after paragraph (1) the
23 following new paragraph (2):

24 “(2) has received a preliminary design review
25 and conducted a formal post-preliminary design re-

1 view assessment, and certifies on the basis of such
2 assessment that the program demonstrates a high
3 likelihood of accomplishing its intended mission;
4 and”; and

5 (D) in paragraph (3), as redesignated by
6 subparagraph (B) of this paragraph—

7 (i) in subparagraph (D), by striking
8 the semicolon and inserting “, as deter-
9 mined by the Milestone Decision Authority
10 on the basis of an independent review and
11 assessment by the Director of Defense Re-
12 search and Engineering; and”;

13 (ii) by striking subparagraph (E); and

14 (iii) by redesignating subparagraph
15 (F) as subparagraph (E).

16 (b) CERTIFICATION AND REVIEW OF PROGRAMS EN-
17 TERING DEVELOPMENT PRIOR TO ENACTMENT OF SEC-
18 TION 2366b OF TITLE 10.—

19 (1) DETERMINATION.—(A) Except as provided
20 in subparagraph (B), beginning not later than 270
21 days after the date of the enactment of this Act, for
22 each major defense acquisition program that has not
23 received a Milestone C approval, or Key Decision
24 Point C approval in the case of a space program, the
25 Milestone Decision Authority shall determine wheth-

1 er or not the program satisfies the certification com-
2 ponents specified in paragraphs (1) and (2) of sub-
3 section (a) of section 2366b of title 10, United
4 States Code.

5 (B) Subparagraph (A) shall not apply to a
6 major defense acquisition program that has been re-
7 viewed pursuant to section 2366b, title 10, United
8 States Code, prior to the date that is 270 days after
9 the date of the enactment of this Act.

10 (2) ANNUAL REVIEW.—The Milestone Decision
11 Authority shall review any program determined pur-
12 suant to paragraph (1) not to satisfy the certifi-
13 cation components of subsection (a) of section 2366b
14 of title 10, United States Code, not less often than
15 annually thereafter to determine the extent to which
16 such program currently satisfies the certification
17 components specified in paragraphs (1) and (2) of
18 subsection (a) of such section until such time as the
19 Milestone Decision Authority determines that the
20 program satisfies all such certification components.

21 (3) DESIGNATION OF CERTIFICATION STATUS
22 IN BUDGET DOCUMENTATION.—Any budget request,
23 budget justification material, budget display, re-
24 programming request, Selected Acquisition Report,
25 or other budget documentation or performance re-

1 port submitted by the Secretary of Defense to the
2 President regarding a major defense acquisition pro-
3 gram which the Milestone Decision Authority deter-
4 mines under paragraph (1) does not satisfy the cer-
5 tification components specified in paragraphs (1)
6 and (2) of subsection (a) of section 2366b of title
7 10, United States Code, shall prominently and clear-
8 ly indicate that such program has not fully satisfied
9 such certification components until such time as the
10 Milestone Decision Authority makes the determina-
11 tion that such program has satisfied all certification
12 components pursuant to paragraph (2).

13 (c) REVIEWS OF PROGRAMS RESTRUCTURED AFTER
14 EXPERIENCING CRITICAL COST GROWTH.—The official
15 designated to perform oversight of performance assess-
16 ment pursuant to section 145 of title 10, United States
17 Code, as added by this Act, shall annually review each
18 major defense acquisition program that has been consid-
19 ered pursuant to paragraph (2) of section 2433(e) of title
20 10, United States Code, and which has been certified as
21 necessary to continue pursuant to such paragraph, to as-
22 sess the success of the program in achieving adequate pro-
23 gram performance after the completion of such consider-
24 ation. The results of reviews performed pursuant to this

1 subsection shall be included in the next annual report of
2 such official.

3 **SEC. 203. REQUIREMENT FOR CERTIFICATION OF MAJOR**
4 **SYSTEMS PRIOR TO MILESTONE B.**

5 (a) CERTIFICATION.—Except as provided in sub-
6 section (b), beginning not later than 270 days after the
7 date of the enactment of this Act, for each major defense
8 acquisition program that has not received Milestone B ap-
9 proval, or Key Decision Point B approval in the case of
10 a space program, the Milestone Decision Authority shall
11 certify, after consultation with the Joint Requirements
12 Oversight Council on matters relating to program require-
13 ments and military needs—

14 (1) that the program fulfills an approved initial
15 capabilities document;

16 (2) that the program is being executed by an
17 entity with a relevant core competency as identified
18 by the Secretary of Defense under section 118b of
19 title 10, United States Code;

20 (3) if the program duplicates a capability al-
21 ready provided by an existing program, the duplica-
22 tion provided by such program is necessary and ap-
23 propriate;

24 (4) that a cost estimate for the development of
25 such program has been submitted to the Milestone

1 Decision Authority and that the concurrence of the
2 official designated to perform oversight of cost esti-
3 mation pursuant to section 145 of title 10, United
4 States Code, has been obtained regarding the choice
5 of a cost estimate; and

6 (5) that a schedule identifying the time and
7 major activities required to reach Milestone B ap-
8 proval, or Key Decision Point B approval in the case
9 of a space program, has been submitted to the Mile-
10 stone Decision Authority.

11 (b) EXCEPTION.—Subsection (a) shall not apply to
12 a major defense acquisition program that has received a
13 certification as required by section 2366a, title 10, United
14 States Code.

15 (c) REPORTS.—

16 (1) RELATING TO COST GROWTH OR SCHEDULE
17 DELAY OF PROGRAMS CERTIFIED UNDER SUB-
18 SECTION (a).—With respect to a major defense ac-
19 quisition program certified by the Milestone Decision
20 Authority under subsection (a), the Milestone Deci-
21 sion Authority shall submit to the congressional de-
22 fense committees a report in accordance with this
23 subsection if, prior to Milestone B approval—

24 (A) the projected development cost of the
25 program exceeds the cost estimate for the pro-

1 gram submitted to the Milestone Decision Au-
2 thority in accordance with subsection (a)(4) by
3 more than 25 percent; or

4 (B) the schedule submitted to the Mile-
5 stone Decision Authority in accordance with
6 subsection (a)(5) is delayed by more than 25
7 percent.

8 (2) RELATING TO COST GROWTH OF PROGRAMS
9 CERTIFIED UNDER SECTION 2366a.—With respect to
10 a major defense acquisition program certified by the
11 Milestone Decision Authority under section 2366a of
12 title 10, United States Code, the Milestone Decision
13 Authority shall submit to the congressional defense
14 committees a report in accordance with this sub-
15 section if the program manager submits a notifica-
16 tion to the Milestone Decision Authority pursuant to
17 section 2366a(b).

18 (3) MATTERS COVERED.—Any report submitted
19 pursuant to paragraph (1) or (2) shall—

20 (A) identify the root causes of the cost or
21 schedule growth;

22 (B) identify appropriate acquisition per-
23 formance measures for the remainder of the de-
24 velopment of the program; and

25 (C) include one of the following:

1 (i) A written certification (with a sup-
2 porting explanation) stating that—

3 (I) such program is essential to
4 national security;

5 (II) there are no alternatives to
6 such program that will provide accept-
7 able military capability at less cost;

8 (III) new estimates of the devel-
9 opment cost or schedule, as appro-
10 priate, are reasonable; and

11 (IV) the management structure
12 for the program is adequate to man-
13 age and control program development
14 cost and schedule.

15 (ii) A plan for terminating the devel-
16 opment of the program or withdrawal of
17 Milestone A approval (or Key Decision
18 Point A approval in the case of a space
19 program) if the Milestone Decision Author-
20 ity determines that such action is in the in-
21 terest of national defense.

22 (4) TIME OF SUBMISSION.—A report required
23 by this subsection shall be submitted—

24 (A) in the case of a report required by
25 paragraph (1), not later than 30 days after the

1 Milestone Decision Authority determines the
2 cost growth or schedule delay described in that
3 paragraph; and

4 (B) in the case of a report required by
5 paragraph (2), not later than 30 days after the
6 Milestone Decision Authority receives the notifi-
7 cation from the program manager described in
8 that paragraph.

9 (d) DEFINITIONS.—In this section:

10 (1) MAJOR DEFENSE ACQUISITION PROGRAM.—
11 The term “major defense acquisition program” has
12 the meaning provided in section 2430 of title 10,
13 United States Code.

14 (2) INITIAL CAPABILITIES DOCUMENT.—The
15 term “initial capabilities document” has the meaning
16 provided by section 2366a (c)(2) of such title.

17 (3) ENTITY.—The term “entity” has the mean-
18 ing provided by section 2366a(c)(4) of such title.

19 (4) MILESTONE B APPROVAL.—The term “Mile-
20 stone B approval” has the meaning provided by sec-
21 tion 2366(e)(7) of such title.

1 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**
2 **QUISITION PROGRAMS.**

3 (a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL
4 COST GROWTH.—Paragraph (2) of section 2433(e) of title
5 10, United States Code, is amended to read as follows:

6 “(2)(A) If the program acquisition unit cost or pro-
7 curement unit cost of a major defense acquisition program
8 or designated major subprogram (as determined by the
9 Secretary under subsection (d)) increases by a percentage
10 equal to or greater than the critical cost growth threshold
11 for the program or subprogram, the Secretary of Defense,
12 after consultation with the Joint Requirements Oversight
13 Council regarding program requirements, shall—

14 “(i) determine the root cause or causes of the
15 critical cost growth including the role, if any, of—

16 “(I) changes or growth in requirements;

17 “(II) unrealistic baseline estimates;

18 “(III) any design, engineering, manufac-
19 turing, or technology integration issues;

20 “(IV) changes in procurement quantities;

21 “(V) inadequate program funding or fund-
22 ing instability;

23 “(VI) poor performance by government or
24 contractor personnel responsible for program
25 management; or

1 “(VII) other causes as identified by the
2 Secretary;

3 “(ii) subject to subparagraph (B), determine
4 whether to terminate such program or to restructure
5 such program after assessing—

6 “(I) the root causes of cost growth identi-
7 fied pursuant to subparagraph (A);

8 “(II) the validity and urgency of the joint
9 military requirement;

10 “(III) the viability of the acquisition strat-
11 egy;

12 “(IV) the quality of program management;
13 or

14 “(V) a broad range of potential material
15 and non-material alternatives to such program;

16 “(iii) submit the determination made under
17 clause (ii) to Congress, before the end of the 60-day
18 period beginning on the day the Selected Acquisition
19 Report containing the information described in sub-
20 section (g) is required to be submitted under section
21 2432(f) of this title; and

22 “(iv) if a report under paragraph (1) has been
23 previously submitted to Congress with respect to
24 such program or subprogram for the current fiscal
25 year but was based upon a different unit cost report

1 from the program manager to the service acquisition
2 executive designated by the Secretary concerned,
3 submit a further report containing the information
4 described in subsection (g), determined from the
5 time of the previous report to the time of the cur-
6 rent report.

7 “(B) A program may be restructured pursuant to a
8 determination under subparagraph (A)(ii) only if—

9 “(i) a written certification (with a supporting
10 explanation) is submitted along with the determina-
11 tion stating that—

12 “(I) such program is essential to national
13 security;

14 “(II) there are no alternatives to such pro-
15 gram which will provide acceptable military ca-
16 pability at less cost;

17 “(III) new estimates of the program acqui-
18 sition unit cost or procurement unit cost are
19 reasonable; and

20 “(IV) the management structure for the
21 program is adequate to manage and control
22 program acquisition unit cost or procurement
23 unit cost; and

1 “(ii) the most recent milestone decision is revis-
 2 ited and results in the approval of such restructured
 3 program.”.

4 (b) TOTAL EXPENDITURE FOR PROCUREMENT RE-
 5 SULTING IN TREATMENT AS MAJOR DEFENSE ACQUI-
 6 TION PROGRAM.—Section 2430(a)(2) of such title is
 7 amended by inserting “, including all planned increments
 8 or spirals,” after “an eventual total expenditure for pro-
 9 curement”.

10 (c) CONFORMING AMENDMENTS.—Section
 11 2433(e)(3) of such title is amended—

12 (1) in subparagraph (A), by striking “or
 13 (2)(B)” and inserting “or (2)(A)(iii)”; and

14 (2) in subparagraph (B)—

15 (A) by striking “or (2)(B)” and inserting
 16 “or (2)(A)(iii)”; and

17 (B) by striking “paragraph (2)(A)” and
 18 inserting “paragraph (2)(B)”.

19 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**
 20 **THE ACQUISITION OF MAJOR WEAPON SYS-**
 21 **TEMS.**

22 (a) REQUIREMENT FOR PANEL TO PRESENT REC-
 23 OMMENDATIONS.—Not later than one year after the date
 24 of the enactment of this Act, the Panel on Contracting
 25 Integrity established pursuant to section 813 of the John

1 Warner National Defense Authorization Act for Fiscal
2 Year 2007 (Public Law 109–364; 120 Stat. 2320) shall
3 present recommendations to the Secretary of Defense on
4 measures to eliminate or mitigate organizational conflicts
5 of interest in the acquisition of major weapons systems.

6 (b) REVISED REGULATIONS REQUIRED.—Not later
7 than 180 days after receiving recommendations pursuant
8 to subsection (a), the Secretary of Defense shall revise the
9 Defense Supplement to the Federal Acquisition Regula-
10 tion to address organizational conflicts of interest by con-
11 tractors in the acquisition of major weapon systems.

12 (c) EXTENSION OF PANEL ON CONTRACTING INTEG-
13 RITY.—Subsection (e) of section 813 of the John Warner
14 National Defense Authorization Act (Public Law 109–
15 364; 120 Stat. 2321) is amended to read as follows:

16 “(e) TERMINATION.—(1) Subject to the restriction in
17 paragraph (2), the panel shall continue to serve until the
18 date that is 18 months after the date on which the Sec-
19 retary of Defense notifies the congressional defense com-
20 mittees of an intention to terminate the panel based on
21 a determination that the activities of the panel no longer
22 justify its continuation and that concerns about con-
23 tracting integrity have been fully mitigated.

24 “(2) The panel shall continue to serve at least until
25 December 31, 2011.”.

1 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**
2 **SONNEL FOR EXCELLENCE IN THE ACQUISI-**
3 **TION OF PRODUCTS AND SERVICES.**

4 (a) IN GENERAL.—Not later than 180 days after the
5 date of the enactment of this Act, the Secretary of Defense
6 shall commence carrying out a program to recognize excel-
7 lent performance by individuals and teams of members of
8 the Armed Forces and civilian personnel of the Depart-
9 ment of Defense in the acquisition of products and serv-
10 ices for the Department of Defense.

11 (b) ELEMENTS.—The program required by sub-
12 section (a) shall include the following:

13 (1) Procedures for the nomination by the per-
14 sonnel of the military departments and the Defense
15 Agencies of individuals and teams of members of the
16 Armed Forces and civilian personnel of the Depart-
17 ment of Defense for eligibility for recognition under
18 the program.

19 (2) Procedures for the evaluation of nomina-
20 tions for recognition under the program by one or
21 more panels of individuals from the Government,
22 academia, and the private sector who have such ex-
23 pertise, and are appointed in such manner, as the
24 Secretary shall establish for purposes of the pro-
25 gram.

1 (c) AWARD OF CASH BONUSES.—As part of the pro-
 2 gram required by subsection (a), the Secretary may award
 3 to any individual recognized pursuant to the program a
 4 cash bonus authorized by any other provision of law to
 5 the extent that the performance of such individual so rec-
 6 ognized warrants the award of such bonus under such pro-
 7 vision of law.

8 **SEC. 207. CONSIDERATION OF TRADE-OFFS AMONG COST,**
 9 **SCHEDULE, AND PERFORMANCE IN THE AC-**
 10 **QUISITION OF MAJOR WEAPON SYSTEMS.**

11 (a) REVIEW OF MECHANISMS FOR CONSIDERING
 12 TRADE-OFFS.—The Comptroller General shall review the
 13 use by the Department of Defense of certain mechanisms
 14 for considering trade-offs among cost, schedule, and per-
 15 formance in the acquisition of major weapon systems.

16 (b) MECHANISMS INCLUDED.—The mechanisms re-
 17 viewed pursuant to subsection (a) shall include—

18 (1) the Tri-Chair Committee, as defined in sec-
 19 tion 817 of the National Defense Authorization Act
 20 for Fiscal Year 2008 (Public Law 110–181; 122
 21 Stat. 225);

22 (2) Configuration Steering Boards as estab-
 23 lished pursuant to section 814 of the Duncan
 24 Hunter National Defense Authorization Act for Fis-

1 cal Year 2009 (Public Law 110–417; 122 Stat.
2 4528); and

3 (3) any other mechanisms identified as allowing
4 for the consideration of trade-offs in the report on
5 investment strategies for major defense acquisition
6 programs required by section 817 of the National
7 Defense Authorization Act for Fiscal Year 2008
8 (Public Law 110–181).

9 (c) ASSESSMENT OF MECHANISMS.—The review shall
10 describe and evaluate the effectiveness of the mechanisms
11 identified in subsection (b).

12 (d) REPORT.—Not later than one year after the date
13 of the enactment of this Act, the Comptroller General shall
14 submit to the congressional defense committees a report
15 on the review and assessment performed pursuant to this
16 section. The report shall include such recommendations as
17 the Comptroller General considers appropriate on the mat-
18 ters reviewed, including recommendations to improve the
19 effectiveness of the mechanisms included in the report.

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